

II. REMARKS

The instant response is being filed in response to the Office communication mailed on September 28, 2010, which stated that Applicants' reply filed on March 8, 2010 was non-responsive.

Applicants submit that the reply filed on March 8, 2010 was fully response for the reasons given below, and request that the Office communication mailed on September 28, 2010 be vacated.

On June 23, 2008, in the response to the election of species requirement, Applicants elected pain from arthritis for examination in the instant application.

On March 8, 2010, Applicants filed a reply to the Office Action of February 4, 2009. In the reply, Applicants amended claim 63 to recite "pain without inflammation" and added claims 71 and 73, each reciting in part "pain without inflammation." The reply filed on March 8, 2010, recited on page 10 that "claims 38 and 47-76 read on the species elected in the response filed on June 23, 2008."

In the Office communication mailed on September 28, 2010, the Examiner states that the Applicants' reply filed on March 8, 2010 was not responsive, because it was not clear to the Examiner "how new claims 71 and 73 (as well as amend[ed] claim 63)- each drawn to pain without inflammation- reads on arthritis since arthritic pain arises from inflamed joints." Office communication, page 3.

Applicants respectfully submit that (i) arthritis can be inflammatory and noninflammatory, and (ii) that arthritic pain is not limited to "inflamed pain." For example, according to the Textbook of Internal Medicine, third edition, part of the differential diagnosis of arthritis (i.e., monarticular arthritis) is determination of "whether the arthritis is inflammatory or noninflammatory." See Textbook of Internal Medicine, third edition, page 1091 (1997); see

also Fig. 170-1 on page 1092. A copy of pages 1091-1093 from the Textbook of Internal Medicine is attached to the instant response as Appendix A.

Applicants therefore submit that as recited in the reply filed on March 8, 2010, amended claim 63 and new claims 71 and 73 read on the elected species. See page 10 ("claims 38 and 47-76 read on the species elected in the response filed on June 23, 2008.").

Accordingly, Applicants submit that the reply filed on March 8, 2010, was fully responsive, and respectfully request that the Office communication mailed on September 28, 2010, be vacated.


Applicants further request that the arguments and amendments presented in the reply filed on March 8, 2010, be considered by the Examiner.

Applicants respectfully state that claims 38 and 47-76 read on the species elected in the response filed on June 23, 2008.

III. CONCLUSION

An early and favorable action on the merits is earnestly solicited. The Examiner is respectfully requested to contact the undersigned at the telephone number provided below in the event that a telephonic interview will advance the prosecution of the application.

Respectfully submitted,
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